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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,019	10/15/2001	Thomas Lemaigre du Breuil	GEN-126	1611

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EXAMINER	
FLANDERS, ANDREW C	

ART UNIT	PAPER NUMBER
2615	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/976,019	DU BREUIL, THOMAS LEMAIGRE	
	Examiner	Art Unit	
	Andrew C. Flanders	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,19-49,53 and 55* is/are pending in the application.

4a) Of the above claim(s) *19-43,48 and 49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,44-47,55 and 56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08 May 2006 has been entered.

Response to Arguments

Applicant's arguments filed 08 May 2006 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with Applicant's allegations. Applicant states "Jin provides for a method wherein certain parameters, such as the number of available speakers, amplifier connections, and source content information are detected (see col. 5, lines 43-50), and as a function of these detected parameters, a user is provided with access to on-scren menus (col. 5, line 65 – col. 6, line 5). The user can employ the menus to select a desired listening mode and adjust the audio environment (see

examples 1-6, col. 6, line 32 – col. 7 line 55)." The Examiner generally agrees with this broad description of the Jin reference.

Applicant further states "Jin doesn't provide for optimizing and configuring and configuring an audio system (the purpose to which the Applicant's invention is directed), rather Jin collects audio system data and provides a user with access to compatible menus." The Examiner respectfully disagrees with this statement for two reasons. First, Jin provides for optimizing and configuring an audio system by giving the user the ability to choose audio configurations that are available for the particular system. As noted by Applicant, "Jin provides for a method wherein certain parameters, such as the number of available speakers, amplifier connections, and source content information are detected (see col. 5, lines 43-50), and as a function of these detected parameters, a user is provided with access to on-screen menus (col. 5, line 65 – col. 6, line 5)." The system described by Jin prevents the display and configuration of unusable states. Because these unusable states are not selectable, the system is "optimized". Secondly, Applicant states "The user can employ the menus to select a desired listening mode and adjust the audio environment (see examples 1-6, col. 6, line 32 – col. 7 line 55)." Again, since the user can select a "desired" listening mode, the system is "optimized" for the purposes of that user. A desired listening mode is equated with an optimized listening mode.

Applicant further states "Nothing in Jin suggests a system or a method wherein a user is directed to employ a particular optimal or preferred configuration by manipulating the menus." The Examiner respectfully disagrees. As shown above, the Applicant

states "The user can employ the menus to select a desired listening mode and adjust the audio environment (see examples 1-6, col. 6, line 32 – col. 7 line 55)." Since the user is selecting a "desired" mode, that mode can be considered optimal or preferred for the purposes of that user.

Applicant further states "If Jin provided for such, then perhaps Applicant's invention could be viewed as merely making Jin automatic." Again, Since the user is selecting a "desired" mode (as stated in the previous rejections, art and above by Applicant), that mode can be considered optimal or preferred for the purposes of that user. Thus, making automatic a user selecting a desired mode is an obvious variation.

Applicant further states regarding In re Venner "The court saw the invention (or lack thereof) as merely replacing a human action with a triggered automatic function. There is no function in Jin analogous to automatic optimization of an audio stem as is claimed by the Applicant in Claim 1." The Examiner respectfully disagrees with this statement. In the rejection, there is a replacement of a human action with a triggered automatic function. In Jin, as stated by Applicant "The user can employ the menus to select a desired listening mode and adjust the audio environment (see examples 1-6, col. 6, line 32 – col. 7 line 55)." The user selecting the desired listening mode would be the human action in this case. Making it automatic would be the triggered automatic function.

Applicant further sates "Jin simply provides a method for displaying certain menus that pertain to the detected audio system; there is no determination as to what configuration of the audio system might result in an optimized listening environment for

a user." Examiner respectfully disagrees. Applicant's own brief description of the art shows that a "desired" mode is selected; "The user can employ the menus to select a desired listening mode and adjust the audio environment (see examples 1-6, col. 6, line 32 – col. 7 line 55)." Since a desired mode is selected, an optimized listening environment inherently must be configured since the room will be configured for the desires of that user.

The arguments regarding claim 44 are not persuasive for the same reasons stated above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 – 12, 44 – 47, 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jin (U.S. Patent 6,867,820)

Regarding **Claims 1 and 44**, Jin discloses:

A terminal for optimizing audio equipment (i.e. television display coupled with the speaker set; Fig. 1) for the reproduction of an audio signal that has source characteristic data and that is transmitted through a delivery channel (title and abstract), comprising:

a receiver that receives the audio signal and the source characteristic data (i.e. the DTV in Fig 1 has a CPU; col. 5 lines 9 – 20, 44 – 52 and col. 6 lines 10 – 19; that checks the number of speakers connected; Fig. 4 element S10, checks the content, number of channels, of the selected audio source; Fig. 4 element S20);

a memory that stores the source characteristic data and delivery channel capability data (Referring now to Fig. 4, Fig. 4 discloses a flow chart of operation for the device to determining the usable menus. A flow chart is a representation of a sequence of operations in a process; see the enclosed Dictionary.com definition for flowchart. A flow chart must complete each sequence before the next is to be completed. In this instance, step S10 must be finished before step S20, and step S20 must be completed before S30 and so on. Because operations taking place in step S30 depend on the data that is gathered from S10 and S20, and S30 is done at a later time than S10 and S20, there is an inherent storage of the data found in steps S10 and S20.); and

a processor that generates optimized configuration data for reproducing the audio signal based on the source characteristic data and the delivery channel capability data and audio equipment data (i.e. the CPU determines the usable audio menus and displays them on the screen; col. 6 lines 1 – 5);

a control interface that couples the terminal with the audio equipment (i.e. the connection of the DTV to the speakers; Fig. 1; and the inherent connection of the processor to the display),

wherein the processor generates the optimized configuration data based on the audio equipment data (i.e. the CPU determines the usable audio menus and displays them on the screen; col. 6 lines 1 – 5);

and wherein the optimized configuration data is transmitted through the control interface to the audio equipment (i.e. the data is transmitted via the connection of the processor to the display).

Jin does not explicitly disclose to automatically, without any user input, configure the audio equipment based on the optimized configuration data.

However, it has been shown that making a manual process (such as the choosing of a particular audio configuration disclosed by Jin) automatic is a well known and obvious variant provided no difference occurs; See In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Automatically choosing the optimal setting without a user input would not result in a difference. In fact, as shown in col. 1 lines 55 – 65 of Jin, it is well known in the art that various configurations are optimal. As such, it would be desirable to choose the optimal result available.

Regarding **Claim 2**, in addition to the elements stated above regarding claim 1, Jin further discloses:

a channel map for generating a program guide based on the source characteristic data and the delivery channel capability data (i.e. the system displays only the determined usable menus on the screen, the menus including the channel selections; col. 6 lines 3 – 4).

Regarding **Claim 3**, in addition to the elements stated above regarding claim 1, Jin further discloses:

wherein the memory contains delivery channel capability data for at least two delivery channels (As shown in claim 1, the memory for the delivery channel capability is inherent, and as such, one of the possible channel outputs stored is a multi speaker arrangement; col. 6 lines 25 – 31).

Regarding **Claims 4, 45 and 46**, in addition to the elements stated above regarding claims 1 and 44, Jin further discloses:

wherein the memory comprises (i.e. the inherent memory as shown in claim 1):

a program guide database that stores the source characteristic data (the number of input channels found in S20 is inherently stored); and

a channel map database that stores the delivery channel capability data (the number of output channels found in S10 is inherently stored).

Regarding **Claim 5**, in addition to the elements stated above regarding claim 4, Jin further discloses:

wherein the terminal generates an assembled program guide based on the data in the program guide database and the channel map database (i.e. the system determines the present usable audio menus in step S30 from the data found in S10 and S20).

Regarding **Claim 6**, in addition to the elements stated above regarding claim 4, Jin further discloses:

wherein the program guide database stores the source characteristic data (i.e. the system inherently stores the characteristic data as shown in the rejection of claim 1).

Jin does not disclose storing the data in a source characteristic data field. However, the location of the storage in memory is a design choice by applicant. Locations of memory to which the data is being stored is irrelevant. Minor changes in programming allow for multiple areas of a memory to be used to efficiently store data without producing any new or unexpected results.

Regarding **Claim 7**, in addition to the elements stated above regarding claim 6, the modification of Jin further discloses:

wherein the audio signal is transmitted over one of at least two delivery channels (Fig. 1), and

wherein the program guide data base has at least one source characteristic field assigned to each delivery channel (as shown regarding claim 6, the data is saved for each channel, duplicating this method for multiple channels would have been an obvious implementation to one of ordinary skill in the art, see In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

Regarding **Claim 8**, in addition to the elements stated above regarding claim 4, Jin further discloses wherein the channel map database stores the delivery channel capability data (the system inherently stores the deliver channel data as shown in the rejection of claim 1).

Jin does not disclose storing the data in a delivery channel capability data field. However, the location of the storage in memory is a design choice by applicant. Locations of memory to which the data is being stored is irrelevant. Minor changes in programming allow for multiple areas of a memory to be used to efficiently store data without producing any new or unexpected results.

Regarding **Claims 9 and 47**, in addition to the elements stated above regarding claims 8 and 46, the modification of Jin further discloses:

wherein the audio signal is transmitted over one of at least two delivery channels (Fig. 1), and

wherein the channel map data base has at least one delivery channel capability data field assigned to each delivery channel (as shown regarding claim 8, the data is saved for each channel, duplicating this method for multiple channels would have been an obvious implementation to one of ordinary skill in the art, see In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

Regarding **Claims 10**, in addition to the elements stated regarding claims 1 and 44, Jin further discloses:

wherein the optimized configuration data generated by the processor includes data that provides an alternate configuration if the delivery channel cannot support the source characteristic of the audio signal (i.e. the system determines the usable audio menus, which inherently contain the usable outputs for the given inputs in step S30 of Fig. 4).

Regarding **Claim 11** in addition to the elements stated above regarding claim 1, Jin further discloses: wherein the memory stores the audio equipment data that is used by the processor to generate the optimized configuration data (i.e. the system determines and inherently stores the number of speakers connected to the device in S10 of Fig. 4).

Regarding **Claim 12**, in addition to the elements stated above regarding claim 1, Jin further discloses an output interface that couples the processor to an output mechanism to present the optimized configuration data to a user (i.e. the system displays the usable menus in S40 of Fig. 4).

Regarding **Claims 55**, in addition to the elements stated above regarding claim 44, Jin further discloses wherein the optimized configuration data is transmitted through the control interface to the audio equipment to configure the audio equipment based on the optimized configuration data (i.e. the device configures the menus that are

selectable and sets up the output audio accordingly; See Fig. 4 and col. 6 lines 25 – 50).

Regarding **Claim 56**, in addition to the elements stated above regarding claim 44, Jin further discloses wherein the audio data is retrieved from a memory (Fig. 1 elements 3 and 4).

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7546. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

acf

~~SINH TRAN~~
~~PATENT EXAMINER~~

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